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SIPDIS

STATE PASS INL AND EUR/WE  
JUSTICE FOR OIA AND AFMLS  
TREASURY FOR FINCEN

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SUBJECT: 2004-2005 INCSR PART II: SPAIN CORRECTED VERSION

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Money laundered in Spain is primarily from the proceeds of the Colombian cocaine trade, although money laundered through other Latin American countries also plays a role. Colombian organizations use several methods to move money from European drug sales out of Spain. Money is carried out by airline personnel traveling between Spain and Latin America. Colombian companies purchase goods in Asia and sell the electronics at cartel run stores legally in Europe. Credit card balances are paid in Spanish banks for charges made in Latin America. Money deposited in Spanish banks is withdrawn by ATM cards in Colombia. Wire transfers continue to be a common way of getting money out of Spain.

Drug proceeds from other regions enter Spain as well. Hashish proceeds come from Morocco and heroin money enters from Turkey.

The majority of money that enters Spain to be laundered is smuggled across the border in three ways. Bulk cash is carried in travelers' luggage or hidden on travelers' bodies when arriving at international airports. Shipping containers loaded with currency enter through Spanish ports (such as Algeciras). Money is also brought in by small craft along Spain's long coastline.

The informal nonbank outlets (such as "Locutorios"), which make small international transfers for the immigrant community continue to be used to move money in and out of Spain. Regulators also suspect the presence of "hawala" like networks in the Islamic community.

Tax evasion in internal markets and smuggling of goods along the coastline continue to be a source of illicit funds in Spain. Spanish authorities believe that tax evasion in the cell phone and property industries are the most serious problems. The smuggling of electronics and tobacco from Gibraltar remains an ongoing issue.

Although little of the money laundered in Spain is believed to be used for terrorist financing, money from the extortion of businesses in the Basque region is moved through the financial system and used to finance the Basque terrorist group ETA.

The Spanish government is aware of all of these problems. Unfortunately the scale of the money laundering industry and the sophisticated methods used create a very large law enforcement problem. The government makes every effort to eliminate financial crime in Spain.

There have been no cases of Spanish officials involved in money laundering in Spain.

The Government of Spain (GOS) remains committed to combating narcotics trafficking, terrorism, and financial crimes, and continues to work hard to tighten financial controls. The criminalization of money laundering was added to the penal code in 1988 when laundering the proceeds from narcotics trafficking was made a criminal offense. In 1995 the law was expanded to cover all serious crimes that required a prison sentence greater than three years. All forms of money laundering were made financial crimes in amendments to the code on November 25, 2003, which took effect on October 1, 2004.

The penal code can also apply to individuals in financial firms if their institutions have been used for financial crimes. An amendment to the penal code in 1991 made such persons culpable for both fraudulent acts and negligence connected with money laundering.

Businesses and financial service suppliers operating in Spain or targeting Spanish markets are subject to the law, Ley de Servicios de la Sociedad de Informacion y de Comercio Electronico (LSSICE), that came into force on October 12, 2002, for Internet marketing and distribution. The new law requires businesses to register their domain names, company registry, physical address, and other company details. Financial sector businesses such as online banks must still send written contracts to new customers for signature and obtain physical proof of their identity, in order to comply with existing banking regulations.

Royal Decree 998/2003 of July 5, 2003 modified the structure of the Ministry of Interior to facilitate more active combating of drug trafficking. This law creates an Advisory Committee on Observation that will attempt to follow the use of technologies by criminal organizations and money launderers and take measures to ensure that Spanish law enforcement authorities are able to meet the new challenges.

Specific measures to prevent money laundering were written to regulate the legal entities in the financial sector and individuals moving large sums of cash, in December 1993 (Law No. 19/1993), as an expansion to the criminal code that previously applied only to physical persons. The regulations for enactment were established by Royal Decree 925/1995, which set the standards for regulation of the financial system. The regulations were amended in 2003 and cover money laundering linked to illicit drugs, terrorism, and organized crime. The financial sector is required to identify customers, keep records of transactions, and report suspicious financial transactions. The money laundering law applies to most entities active in the financial system, including banks, mutual savings associations, credit companies, insurance companies, financial advisers, brokerage and securities firms, postal services, currency exchange outlets, casinos, and individuals and unofficial financial institutions exchanging or transmitting money (alternative remittance systems). The 2003 amendments add lawyers and notaries as covered entities. Previously, notaries and lawyers were required to report suspicious cases, but now they are considered part of the financial system that is under the supervision of appropriate regulators.

Law 19/2003 obligates financial institutions to make monthly reports on large transactions. Banks are required to report all international transfers greater than 30,000 euros. The law also requires the declaration and reporting of internal transfers of funds greater than 80,500 euros.

In addition to suspicious transactions, individuals traveling internationally are required to report the importation or exportation of currency greater than 6,000 euros. Law 19/2003 allows the seizure of up to 100 percent if illegal activity under financial crimes ordinances can be proven. Spanish authorities claim they have seen a drop in cash carriers since the law's enactment in July 2003. For cases where the money can not be connected to criminal activity, and has not been declared, the authorities may keep between 25 and 100 percent, depending on the amount of the currency being carried.

The Commission for the Prevention of Money Laundering and Financial Crimes (CPBC) coordinates the fight against money laundering in Spain. The Secretary of State for Economy heads the commission and all of the agencies involved in the prevention of money laundering participate. The representatives include the National Drug Plan Office, the Ministry of Economy, the Federal Prosecutors (Fiscalia), Customs, the Spanish National Police, the Guardia Civil, CNMV (equivalent to the SEC), the Treasury, the Bank of Spain, and the Director General of Insurance and Pension Funds. Any member of the Commission may request an investigation, should suspicious activity be brought to his or her attention.

The CPBC delegates responsibility to two additional organizations. The first is a secretariat in the Treasury, located in the Ministry of Economy. Following investigation and a guilty verdict by a court, this regulating body carries out penalties. Sanctions can include closure, fines, account freezes, or seizures of assets. Law 19/2003 allows seizures of assets of third parties in criminal transactions, and a seizure of real estate in an amount equivalent to the illegal profit. One weakness that remains in financial sanctions is that the joint owner may access joint accounts if he or she can show financial need.

The second organization is the Executive Service of the Commission for the Prevention of Money Laundering (SEPBLAC), which serves as Spain's financial intelligence unit. SEPBLAC receives and analyzes suspicious activity reports (SARs) and currency transaction reports. SEPBLAC has the primary responsibility for any investigation in money laundering cases and directly supervises the anti-money laundering procedures of banks and financial institutions. Incriminating information is turned over to the Federal Prosecutors for prosecution. Spanish banks are required by law to maintain fiscal information for five years and mercantile records for six years.

The Fund of Seized Goods of Narcotics Traffickers receives seized assets. This agency was established under the National Drug Plan. The proceeds from the funds are divided, with half going to drug treatment programs and half to a foundation that supports the officers fighting narcotics trafficking.

Terrorist financing issues are governed by a separate code of law and commission, the Commission of Vigilance of Terrorist Finance Activities (CVAF). This commission was created under Law 12/2003 on the Prevention and Blocking of the Financing of

Terrorism. The commission is headed by the Ministry of Interior and includes representatives from the Fiscalia and Ministries of Justice and Economy. Currently, only the head of CVAFT can request information in terrorist financing cases, so other members must rely on the commission head to begin an investigation.

Crimes of terrorism are defined in Article 571 of the Penal Code, and penalties are set forth in Articles 572 and 574. Sanctions range from ten to thirty years' imprisonment with longer terms if the terrorist actions were directed against government officials. Their ability to freeze accounts in the most recent law is more aggressive than that of most of their European counterparts. Though many laws are transposed from EU directives, Law 12/2003 goes beyond EU requirements. However, the implementing regulations for this law have not been written, and it has not been used. Once in full effect, this law will allow administrative freezing of suspect assets without a judge's order.

All legal charities are placed on a register maintained by the Ministry of Justice. Responsibility for policing registered charities lies with the Ministry of Public Administration. If the charity fails to comply with the requirements, sanctions or other criminal charges may be levied.

Spain is a member of the FATF, and co-chairs the FATF terrorist finance working group. Spain is a participating and cooperating nation to the South American Financial Action Task Force (GAFISUD), and a cooperating and supporting nation to the Caribbean Financial Action Task Force (CFATF). Spain is a major provider of counterterrorism assistance. The GOS ratified the UN Convention against Transnational Organized Crime on March 2, 2002, and the UN International Convention for the Suppression of the Financing of Terrorism on April 9, 2002. Spain is also a party to the 1988 UN Drug Convention. SEPBLAC is a member of the Egmont Group.

The GOS has signed criminal mutual legal assistance agreements with Argentina, Australia, Canada, Chile, the Dominican Republic, Mexico, Morocco, Uruguay, and the United States. Spain's Mutual Legal Assistance Treaty with the United States has been in effect since 1993. Spain also has entered into bilateral agreements for cooperation and information exchange on money laundering issues with Bolivia, Chile, El Salvador, France, Israel, Italy, Malta, Mexico, Panama, Portugal, Russia, Turkey, Venezuela, Uruguay, and the United States. Spain actively collaborates with Europol, supplying and exchanging information on terrorist groups. U.S. law enforcement agencies reported excellent cooperation with their Spanish counterparts in 2004. U.S. customs works closely with Spanish customs, Spanish prosecutors, the national police corps and the Civil Guard. The Drug Enforcement Administration works closely with SEPBLAC, the national police and the Civil Guard. These organizations regularly share information. Official documents however, will only be transferred if requested by a court.

Seizures of assets involving more than one country and the division of the assets depend on the relationship with the third country. EU working groups will determine how to divide the proceeds for member countries. Outside of the EU, bilateral commissions are formed with countries that are members of FATF, FATF-like bodies and the Egmont Group, to deal with the division of seized assets. With other countries, negotiations are conducted on an ad hoc basis. The U.S.-Spain MLAT provides for sharing of seized assets, but the request must be made to the Spanish court hearing the case, rather than administratively.

MANZANARES